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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/981,360	12/18/1997	Kari Kirjavainen	U 011574-0	3410
140	7590	11/24/2004		
LADAS & PARRY 26 WEST 61ST STREET NEW YORK, NY 10023			EXAMINER	
			BRUENJES, CHRISTOPHER P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	08/981,360	KIRJAVAINEN ET AL.
	Examiner Christopher P Bruenjes	Art Unit 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 September 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 and 15-22 is/are pending in the application.
 - 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12, 15 and 18-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The objection to the specification of record in the Office Action mailed January 27, 2004, Pages 4-5 Paragraph 10, has been withdrawn due to Applicant's amendments in the Paper filed September 23, 2004.

2. The 35 U.S.C. 112 rejections of claims 15 and 21 of record in the Office Action mailed January 27, 2004, Pages 5-6 Paragraph 11, have been withdrawn due to Applicant's amendments in the Paper filed September 23, 2004.

3. The 35 U.S.C. 112 rejection of claim 22 of record in the Office Action mailed July 6, 2004, Pages 4 Paragraph 8, has been withdrawn due to Applicant's amendments in the Paper filed September 23, 2004.

REPEATED REJECTIONS

4. The 35 U.S.C. 102 rejections of claims 1-2, 5-9, 11-12, 15, and 18-22 as anticipated by Stanley are repeated for the reasons previously of record in Paper #12, Pages 8-9 Paragraph 8, and the Office Action mailed January 27, 2004, Pages 3-4 Paragraph

7, and Pages 6-7 Paragraph 12, and the Office Action mailed July 6, 2004, Pages 5-6 Paragraph 9.

5. The 35 U.S.C. 103 rejections of claims 3-4 over Stanley in view of Bast are repeated for the reasons previously of record in Paper #12, Pages 13-14.

6. The 35 U.S.C. 103 rejection of claim 10 over Stanley in view of Donuiff is repeated for the reasons previously of record in Paper #12, Pages 11-13 Paragraph 10.

ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments regarding the objection to the specification and the 35 U.S.C. 112 rejections of record have been considered but they are moot since the rejections have been withdrawn.

8. Applicant's arguments regarding the 35 U.S.C. 102 rejections of claims 1-2, 5-9, 11-12, 15, and 18-22 as anticipated by Stanley have been fully considered but they are not persuasive.

In response to Applicant's argument that the foamed layer extruded to the innermost layer simultaneously are bound to each

other more firmly than the layers bonded by sequential extrusion, the arguments of counsel cannot take the place of evidence in the record. Once a reference teaching product appearing to be substantially identical is made the basis of a rejection, and the examiner presents reasoning tending to show inherency, such as the fact that extruded layers whether extruded simultaneously or sequentially would produce a similar product, the burden shifts to the applicant to shown an unobvious difference. The PTO can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of the claimed product. Whether the rejection is based on 'inherency' under 35 U.S.C. 102, on 'prima facie obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same. The burden of proof is similar to that required with respect to product by process claims. See MPEP 2112 V. As further explained in MPEP 2113 with regards to product by process claims, once the examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product.

In response to Applicant's argument that Stanley fails to teach extruding against the base layer, the claims do not teach that the tying layer is adhered or bonded to the base layer. The final product would inherently be the same whether the extrusion occurred before or after pressing against the base layer since the claims do not specify that the tying layer is bonded to the base layer. Therefore, although the examiner admits that Stanley fails to teach the tying layer being adhered to the base layer, the scope of the claims as written do not limit the tubular product to having a strong bond between the tying and base layers.

In response to Applicant's argument that Stanley fails to teach using a foamed adhesion plastic between the base and innermost layer. In the broadest interpretation of the term "adhesion plastic", the material merely needs to be a plastic that adheres to be considered an adhesion plastic. In the case of Stanley the foamed plastic is cross-linked and then extruded to adhere the foamed plastic to the innermost layer. Therefore, the cross-linking of the foamed plastic enables the foamed plastic to adhere to the innermost layer and therefore is an adhesion plastic as that term is defined by the broadest interpretation. The examiner is not stating that the cross-linking of the foamed plastic would give the plastic adherence

to multiple different materials, but merely pointing out that the cross-linked foamed plastic is adhered to the innermost layer and therefore is considered an adhesion plastic.

9. Applicant failed to provide any additional arguments with regard to the 35 U.S.C. 103 rejections of record.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to

Christopher P Bruenjes whose telephone number is 571-272-1489.

The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB *CPB*
November 19, 2004

Harold Pyon
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/22/04